Supreme Court, U.S.
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No. 06-698

IN THE

Supreme Court of the United States

RAMONA VON ONDARZA,
Petitioner

v.

USA RACQUETBALL a/k/a UNITED STATES RACQUETBALL ASSOCIATION, d/b/a US OPEN RACQUETBALLCHAMPIONSHIPS,
Respondent

On Petition for Writ of Mandamus to The El Paso County District Court, In and For the State of Colorado

PETITION FOR WRIT OF MANDAMUS

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QUESTION PRESENTED

Whether the District Court of El Paso County, State of Colorado, erred in denying Petitioner's Motion to Dismiss or Lack of Personal Jurisdiction.

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Pursuant to Supreme Court Rule 20, Petitioner Ramona Von Ondarza ("Von Ondarza") respectfully petitions this Court to issue an Order directing Respondent USA Racquetball a/k/a United States Racquetball Association, d/b/a US Open Racquetball Championships ("USA Racquetball"), to show cause why mandamus should not issue to require the District Court to reverse its Order denying Von Ondarza's Motion to Dismiss for Lack of Personal Jurisdiction.

I. IDENTITY OF THE PETITIONER AND THE PROPOSED RESPONDENT.

Petitioner Von Ondarza is the defendant in the proceeding below. Respondent USA Racquetball is the plaintiff in the proceeding below. USA Racquetball is represented by Barton L. Enoch, Enoch & Enoch, P.C., P.O. Box 1539, Colorado Springs, CO 80901-1539; telephone (719) 475-1140; fax (719) 475-0114.

II. IDENTITY OF THE COURT BELOW.

The proceeding below is pending in the District Court for the County of El Paso County, State of Colorado: USA Racquetball a/k/a United States Racquetball Association, d/b/a US Open Racquetball Championships v. Ramona Von Ondarza, Case No. 05 CV 4849. The Honorable Thomas K. Kane is the judge assigned to this case. There are no related proceedings.

III. IDENTITY OF THE PERSONS OR ENTITIES AGAINST WHOM RELIEF IS SOUGHT.

In this Court, Von Ondarza seeks relief against USA Racquetball.

IV. THE RULING COMPLAINED OF AND THE RELIEF BEING SOUGHT.

The ruling that is the subject of this petition is the District Court's Order denying Von Ondarza's Motion to Dismiss for Lack of Personal Jurisdiction that was entered on May 10, 2006 ("District Court's Order"). (App. G.) Von

Ondarza seeks to reverse the District Court's Order and to dismiss the proceedings below on the basis that the District Court lacks personal jurisdiction over her.

V. REASONS WHY NO OTHER ADEQUATE REMEDY IS AVAILABLE.

Von Ondarza recognizes that action by this Court under Sup. Ct. R. 20 is generally unavailable when normal appellate remedies would be adequate. In re Montes, 677 F.2d 415, 416 (5th Cir. 1982). Appellate remedies would be inadequate in this case because Von Ondarza would be haled more than two thousand miles into a District Court and forced to litigate an entire lawsuit when there should be no personal jurisdiction over her. For Von Ondarza to pursue appellate remedies, she would have to undergo an entire lawsuit. This would require her to undertake significant additional legal expenses and time in traveling from Florida to Colorado, and would also tax the scarce resources of the District Court. Only after spending valuable time and money litigating the underlying case would Von Ondarza be able to

appeal the order at issue here. This Court could spare the resources of the parties to the proceeding below, and the resources of the District Court, reversing this improper order by this Court.

VI. ISSUE PRESENTED.

A. Did the District Court err when it denied Von Ondarza's Motion to Dismiss for Lack of Personal Jurisdiction?

VII. FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED.

A. USA Racquetball's Complaint for Fraud and Breach of Contract.

On December 29, 2005, USA Racquetball filed its Complaint for Fraud and Breach of Contract ("Complaint") in the District Court for El Paso County, Colorado. USA Racquetball is a Colorado nonprofit corporation with a principal place of business in El Paso County, Colorado. (App. A.) It admits in the Complaint that Von Ondarza is a foreign citizen currently residing in Florida. It claims that Von Ondarza somehow falsely represented herself to be an

agent of Adidas and that she negotiated a sponsorship agreement involving the sponsorship of two U.S. Open events. It further claims that Von Ondarza breached the sponsorship agreement by failing to give it monies for the two racquetball events that occurred or will occur in Memphis, Tennessee during the years 2005 and 2006. Id. A copy of this sponsorship agreement was attached to the Complaint as Exhibit 1. (App. A.)

USA Racquetball served the Summons and Complaint upon Von Ondarza in Palm Beach, Florida. (App. B.)

B. Von Ondarza's Motion to Dismiss for Lack of Personal Jurisdiction.

On March 29, 2005, Von Ondarza filed her Motion to Dismiss for Lack of Personal Jurisdiction. In this motion, she requested the District Court to quash service of the Summons upon her and to dismiss the case on the basis that the court did not have personal jurisdiction over her. (Motion to Dismiss for Lack of Personal Jurisdiction, App. C;

Memorandum of Law In support of Defendant's Motion to Dismiss, App. D.) The motion and supporting memorandum were further supported with an Affidavit by Von Ondarza, showing inter alia that: (1) she resides in Boca Raton, Florida; (2) she has no connections with the State of Colorado; (3) she had never lived in Colorado; (4) she has only visited Colorado on two occasions and neither visit was for the purpose of conducting business; (5) she had never come to Colorado to conduct business with USA Racquetball; (6) she does not own any property in Colorado and has never paid taxes to the State of Colorado; (7) she has never been licensed to transact business in Colorado; (8) she has never availed herself of the laws and protections of the State of Colorado; and (9) she never signed the Sponsorship Contract. Moreover, she asked the District Court to simply review the Sponsorship Contract, which shows that it was entered into by an entity known as "U.S. OPEN RACQUETBALL CHAMPIONSHIPS directed by Ganim

Enterprises, Inc., having its principal offices at 6449 Lake *Trail Drive, Westerville, Ohio 43082 . . . and Adidas AG..*, having it principal offices in Herzogenaurach, GERMANY. . . ." (App. A.) The signature page to this contract even shows that it is signed by a Kai Meier of Herzogenaurach, Germany and Douglas J. Ganim. Id. The very wording of this contract shows that it involves parties located in Ohio and Germany for two racquetball events that occurred in Memphis, Tennessee. This Sponsorship Contract, which was drafted by USA Racquetball or its agents, does not even contain a choice of forum clause. If USA Racquetball believed it had a legitimate lawsuit against Von Ondarza, it should have tried to sue her in Florida, where she lives, or Memphis, Tennessee, where the two racquetball events occurred, or in Ohio, where Ganim Enterprises is located, or in Germany, where Adidas is located. Or, it should have included a choice of forum clause in the Sponsorship Contract. Instead, it inappropriately sued her in Colorado, probably for its own

convenience sake. However, since Von Ondarza did not direct activities in Colorado and she has no, or very tenuous, contacts with Colorado, she appropriately requested the District Court to quash the Summons and to dismiss the Complaint.

C. USA Racquetball's Response.

USA Racquetball responded to Von Ondarza's motion, arguing that the District Court had personal jurisdiction over because she had contacts with Colorado. These contacts consisted of her being a member of the USA Racquetball Association, that she had played in some racquetball tournaments and won prize money in some states (none of them Colorado) and that the USA Racquetball's injuries occurred in Colorado. (App. E.) Also, it argued that Colorado had contacts with Von Ondarza because the USA Racquetball Association has "bylaws, which are a contract between plaintiff and its members and are governed by Colorado law." Id. Finally, USA Racquetball argued that

under the "effects test," the injury occurred in Colorado and, therefore, the District Court had personal jurisdiction over Von Ondarza.

D. Von Ondarza's Reply.

Von Ondarza countered USA Racquetball's response by arguing that being a member of a racquetball association that is in a different state than where she resides and playing some tournaments around the county (none of them in Colorado) is grossly insufficient contact with this State to establish the substantial, systematic, and continuous contacts with Colorado, such that the maintenance of a lawsuit in Colorado does not offend traditional notions of fair play and substantial justice. Von Ondarza was not placed on notice that she would be subject to a lawsuit here and that it violated the notions of fair play and substantial justice to require her to come clear to Colorado to defend a lawsuit that was not even related to her membership with the USA Racquetball Association. (App. F.)

E. The District Court's Order.

The District Court's Order denying Von Ondarza's Motion to Dismiss for Lack of Personal Jurisdiction was entered on May 10, 2006. (App. G.) The District Court, whose docket is probably overly burdened, simply stamped USA Racquetball's response brief and attached a single page to it stating "For the reasons cited in the Response of the Plaintiff, the Motion to Dismiss for Lack of Personal Jurisdiction is denied." Id.

VIII. ARGUMENT.

Von Ondarza seeks the remedy of mandamus to cure the clear abuse of discretion and action without jurisdiction undertaken by the District Court in its Order denying her Motion to Dismiss for Lack of Personal Jurisdiction.

A. The Court's Mandamus Jurisdiction.

Title 28, Section 1651(a) of the United States Code authorizes this Court to issue writs of mandamus. The Court exercises that power when normal appellate remedies would

be inadequate. In re Montes, 677 F.2d 415, 416 (5th Cir. 1982); Sup. Ct. R. 20. A writ of mandamus may be used to "confine an inferior court to a lawful exercise of its prescribed jurisdiction." Platt v. Minnesota Mining & Mfg. Co., 376 U.S. 240, 245 (1964).

The District Court has clearly and fundamentally abused its discretion and also has acted in excess of its jurisdiction by denying Von Ondarza's Motion to Dismiss for Lack of Personal Jurisdiction and, thereby, exercising personal jurisdiction over her. Appellate remedies would be inadequate in this case because the parties, the District Court, and jurors would be forced to go through an entire lawsuit, incurring the costs of litigation and attorney's fees before any appeal could be made. Therefore, this Court should exercise its mandamus power to enforce the well-established laws of Colorado and the United States pertaining to jurisdiction and prevent the District Court from exercising personal jurisdiction over Von Ondarza.

In this case, mandamus is proper because the District Court clearly abused its discretion and acted far outside its jurisdiction, as described below. Further, as discussed above, appellate relief is inadequate.

B. The District Court Abused Its Discretion When It Denied Von Ondarza's Motion to Dismiss for Lack of Personal Jurisdiction and Exercised Personal Jurisdiction Over Her.

The District Court abused its discretion when it denied Von Ondarza's Motion to Dismiss for Lack of Personal Jurisdiction. This was an abuse of discretion because: (1) Von Ondarza never conducted activities in Colorado that were substantial, systematic, and continuous in order for a Colorado court to exercise general jurisdiction over her, and (2) she does not have minimum contacts with the State of Colorado such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Thus, there is no judicial basis for the District Court's decision to exercise personal jurisdiction over Von Ondarza.

Deciding whether a trial court may properly assert personal jurisdiction over a party is a question of law subject to de novo review. Soma Med. Int'l v. Standard Chartered Bank, 196 F.3d 1292, 1295 (10th Cir. 1999). The plaintiff has the burden of proving jurisdiction exists when the jurisdiction of the court is challenged. Wenz v. Memery Crystal, 55 F.3d 1503, 1505 (10th Cir. 1995).

A plaintiff seeking to invoke a Colorado court's jurisdiction over a non-resident defendant must comply with the requirements of the Colorado's long-arm statute and not offend the due process clause of the Fourteenth Amendment. *See,* Keefe v. Kirschenbaum & Kirschenbaum, P.C., 40 P.3d 1267, 1270 (Colo. 2002). Since "Colorado's long-arm statute is coextensive with constitutional limitations imposed by the due process clause, ... if jurisdiction is consistent with the due process clause, [then] Colorado's long-arm statute authorizes jurisdiction over a non-resident defendant." Benton v. Cameco Corp., 375 F.3d 1070, 1075 (10th Cir.

2004); Day v. Snowmass Stables, Inc. et al., 810 F.Supp. 289, 291 (D.Colo. 1993) ("Colorado's long-arm statute is coextensive with constitutional limitations imposed by the due process clause"); Shepherd v. United States Olympic Comm. et al., 94 F.Supp. 2d 1136, 1140 (D.Colo. 2000).

The due process clause of the Fourteenth Amendment "protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful contacts, ties, or relations." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985) (quotations omitted). Due process requirements are satisfied only when minimum contacts with the state exist such that the assertion of jurisdiction would not offend "traditional notions of fair play and substantial justice." *See,* International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (emphasis added).

The "minimum contacts" standard may be met in two ways, either by the establishment of specific or general

jurisdiction. When a state exercises jurisdiction over a non-resident defendant in a suit arising out of or related to the defendant's contacts with the forum, the state is exercising specific jurisdiction over the defendant. *See,* Benton, 375 F.3d at 1075. General jurisdiction, however, refers to suits neither arising out of nor related to the defendant's contacts, and is permitted only where the defendant has carried on its activities in the forum state with a fair measure of permanence and continuity, not occasionally or casually. *Id. See also,* Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408 (1984) (requiring "continuous and systematic" contacts with the forum for the assertion of general jurisdiction). For a finding of general jurisdiction, "courts impose a more stringent minimum contacts test," and require an even greater affiliation with the forum. Benton, 375 F.3d at 1080; Kuenzle v. HTM Sport-Und Freizeitgerte AG, 102 F.3d 453, 458 (10th Cir. 1996).

1. The District Court May Not Exercise General Jurisdiction Over Von Ondarza.

On the facts of this case, there is no basis for the District Court to exercise general jurisdiction over Ms. Von Ondarza. A defendant's activities in the forum state must be substantial, systematic and continuous in order for a Colorado court to exercise general jurisdiction over her as to any cause of action against her, even those unrelated to their contact with the forum. *See, e.g.,* Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408 (1984); Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472 n.15 (1985); Perkins v. Benquet Consol. Mining Co., 342 U.S. 437, 446 (1952).

Ms. Von Ondarza has not conducted any activities in Colorado, let alone activities that are substantial, systematic, and continuous as required for a Colorado court to exercise general jurisdiction over her. At all times relevant, she has resided in Florida, has never lived, or owned property, in Colorado and has only visited the state on two occasions that were wholly unrelated to this matter. Von Ondarza has no

connections or contacts in Colorado, has never been licensed to conduct business in Colorado, and has never come to Colorado to transact any business. She has never paid taxes in Colorado and she has never been involved in litigation in Colorado. Furthermore, Von Ondarza has never intended to avail herself of the laws and protections of the State of Colorado and has never come to Colorado for any transaction or activity related to USA Racquetball.

Not only are there insufficient contacts between Von Ondarza and the State of Colorado, but the "Sponsorship Contract" at issue was not executed by plaintiff or defendant or any Colorado resident. It was executed by Douglas L. Ganim of Ganim Enterprises, Inc., located in Westerville, Ohio, and Kai W. Meier of Herzogenaurach, Germany. Certainly. Whoever signed the Sponsorship Contract did not do so in the State of Colorado.

Finally, the subject of the Sponsorship Contract is the U.S. Open event for the 2005 and 2006 Racquetball

Championships. These events did not occur in Colorado, but in Memphis, Tennessee. Since none of the parties to this Sponsorship Contract reside in Colorado, it was not signed in Colorado, and the subject events of the contract did not occur in Colorado, there is no basis for the Colorado District Court to exercise general jurisdiction over Von Ondarza.

2. The District Court May Not Exercise Specific Jurisdiction Over Von Ondarza.

There is also no basis for the exercise of specific jurisdiction over Von Ondarza. The analysis of specific jurisdiction is a two-step inquiry. Benton v. Cameco Corp., 375 F.3d 1070, 1075 (10th Cir. 2004). "First, we must consider whether 'the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there.'" Id. at 1075 (*quoting* World-Wide Volkswagen v. Woodson, 444 U.S. 286, 291 (1980)). If that is satisfied, establishing minimum contacts, the next step is to "consider whether the exercise of personal jurisdiction over the defendant offends 'traditional notions of

fair play and substantial justice.'" Id. at 1075-76 (*citing* OMI Holdings, Inc. v. Royal Ins. Co. of Canada, 149 F.3d 1086 (10th Cir. 1998) [*quoting* Asahi Metal Indus. Co. v. Superior Court of Calif., 480 U.S. 102 (1987)]). This analysis is governed by a standard of reasonableness. The relationship between the defendant and the forum state must be such that it is reasonable to require the defendant to defend the particular suit which is brought there. International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945).

The "minimum contacts" standard protects the defendant against litigating in an inconvenient forum and, at the same time, ensures that the states to do not overreach the limits imposed upon them by their status as coequal sovereigns in our federal system. World-Wide Volkswagon, 444 U.S. at 291-2. "Requiring as it does a determination of 'reasonableness,' the 'minimum contacts' standard is not susceptible of mechanical application and, instead, involves an ad hoc analysis of the facts. In this area of the law the

ultimate determination will rarely, if ever, be written in black and white." Fleet Leasing, Inc. v. District Court, 649 P.2d 1074, 1079 (Colo. 1982).

Sufficient contacts to support personal jurisdiction over a non-resident defendant may be found where the defendant "purposefully availed itself of the privilege of conducting activities within the forum State." Hanson v. Denckla, 357 U.S. 235, 253 (1958). By availing itself of this privilege, the defendant "has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or if the risk is too great, severing its connection with the State." World-Wide Volkswagen, 444 U.S. at 297.

Here, Von Ondarza has no contacts with Colorado relating to the claims in this case, she did not "purposefully avail" herself to the privileges of Colorado, and she was never given notice that she would be subject to a lawsuit

here. The activities complained of by USA Racquetball were not related to her membership and did not occur in Colorado. In addition, there was no choice of forum clause in the Sponsorship Contract. For a Colorado court to exercise specific jurisdiction over Ms. Von Ondarza, due process requires the plaintiff to meet the burden of establishing minimum contacts over the non-resident defendant. It is only after this burden has been met that the second step of the specific jurisdiction analysis -- whether jurisdiction conforms with "fair play and substantial justice" -- takes place. USA Racquetball has not met its burden because minimum contacts have not been shown between Ms. Von Ondarza and the State of Colorado.

Even if minimum contacts had been demonstrated, the relationship between Ms. Von Ondarza and the State of Colorado are not sufficient to show that fair play and substantial justice would reasonably require the Von Ondarza to defend this suit in Colorado. In determining whether an

exercise of jurisdiction is reasonable in light of the circumstances surrounding the case, the court may consider:

> (a) the burden on the defendant, (b) the forum state's interest in resolving the dispute, (c) the plaintiff's interest in receiving convenient and effective relief, (d) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (e) the shared interest of the several states in furthering fundamental social policies.

Benton v. Cameco, 375 F.3d 1070, 1078 (10th Cir. 2004).

Applying the Benton considerations proves that it violates the due process rights of Von Ondarza and it is unreasonable for her to be required to defend this case in this forum. The burden on Ms. Von Ondarza would be great; the financial and time requirements that would be placed on her by necessarily traveling over 2,000 miles between her residence in Florida and Colorado to defend this lawsuit is severe. Requiring this travel and expense when she has never

conducted activities in Colorado and was not given notice that she would be subject to defending a lawsuit here is categorically unfair. Further, the State of Colorado has no interest in resolving a dispute regarding an alleged breach of contract that the plaintiff did not sign, but instead was signed by an Ohio resident and an a resident of Germany, regarding two events that occurred or will occur in Tennessee. The plaintiff has little expectation in this lawsuit of receiving convenient and effective relief because USA Racquetball was not a signor of the contract, and the parties who did sign, Ganim Enterprises and Kai Meier, are residents of Ohio and Germany, respectively. If USA Racquetball had any expectations of using Colorado as the forum for litigation involving this contract, it could have easily drafted a choice of forum clause in the Sponsorship Contract, but it did not. Since contracts are construed against the drafter, *see, e.g.,* Green Shoe Mfg. Co. v. Farber, 712 P.2d 1014, 1016 (Colo. 1986), it must be presumed that by omitting a choice of

forum clause, USA Racquetball had no intention or interest in suing Von Ondarza in a Colorado court in the event of a breach. Finally, if this case is to be brought and adjudicated, it should be brought in a state or federal court in Florida, Ohio or Tennessee, where at least there would be a state and judicial system with an interest in resolving this controversy and furthering fundamental social policies.

In sum, Ms. Von Ondarza has not "purposefully directed" any actions toward Colorado and has not invoked the "benefits and protections of the laws of the state." The exercise of jurisdiction over Ms. Von Ondarza by a Colorado court based on these facts offends "traditional notions of fair play," and she should not be subject to the Colorado District Court's jurisdiction.

The argument made by USA Racquetball, that Ms. Von Ondarza is subject to personal jurisdiction in Colorado because she is a member of the plaintiff's organization, is overreaching. Under this analysis, any person in the United

States who is a member of AAA, the automobile club, would be subject to a lawsuit in the state where it has its principal place of business even if the conflict between the member and the organization arises out of a transaction that is unrelated to membership. Similarly, any member of AARP would be subject to a lawsuit in the state where AARP has its principle place of business, even if the dispute is not related to the membership. Such a simplistic analysis, if accepted, would overturn International Shoe, World-Wide Volkswagen, Hanson and their progeny.

Since the District Court's actions in denying the Motion to Dismiss for Lack of Personal Jurisdiction and exercising personal jurisdiction are contrary to the well-established law governing the exercise of personal jurisdiction and constitute an abuse of discretion, Von Ondarza requests this Court to exercise its mandamus power to reverse the District Court and quash the Summons and dismiss the Complaint.

IX. CONCLUSION.

This Court should exercise its original jurisdiction to review the abuse of discretion and action in excess of jurisdiction by the District Court. For the reasons explained above, the District Court's order denying Von Ondarza's Motion to Dismiss for Lack of Personal Jurisdiction and exercising personal jurisdiction over her was clearly and most fundamentally an abuse of the District Court's discretion. As well, the District Court's actions clearly exceed its jurisdiction. Use of the appellate process would needlessly require Von Ondarza to litigate the entire case when the District Court simply does not have personal jurisdiction over her. Thus, mandamus review by this Court is appropriate and necessary.

For the reasons stated, Von Ondarza respectfully requests that the Court exercise its original jurisdiction to issue a rule to show cause why the District Court should not be required to reverse its order denying Von Ondarza's

Motion to Dismiss for Lack of Personal Jurisdiction, quash the Summons served on her and dismiss the Complaint.

X. LIST OF SUPPORTING DOCUMENTS.

The following documents support this petition:

A. Plaintiff USA Racquetball's Complaint, dated December 29, 2005.

B. Return of Service on Defendant.

C. Motion to Dismiss for Lack of Person Jurisdiction, dated March 29, 2006.

D. Memorandum in Support of Motion to Dismiss, dated March 29, 2006.

E. Plaintiff's Response to Defendant's Motion to Dismiss for Lack of Personal Jurisdiction, dated April 13, 2006. *(Note: Attachments to Kevin Joyce Affidavit omitted.)*

F. Reply in Support of Motion to Dismiss for Lack of Personal Jurisdiction, dated May 1, 2006. *(Note: Exhibits B and C omitted.)*

G. District Court's Order.

Respectfully submitted this 4th day of October, 2006.

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Defendant Ramona Von Ondarza

APPENDIX A

District Court, El Paso County, CO 20 E. Vermijo Colorado Springs, CO 80903 719-448-7577	
PLAINTIFF: USA Racquetball a/k/a United States Racquetball Association, d/b/a US Open Racquetball Championships DEFENDANT: Ramona von Ondarza	COURT USE ONLY
Barton L. Enoch (#8099) Enoch & Enoch, P.C. P.O. Box 1539 Colorado Springs, CO 80901-1539 719-475-1140/Fax 719-475-0114 benoch@enochenoch.com	Case No: 05CV4849 Div. 3 Ctrm:406
COMPLAINT FOR FRAUD AND BREACH OF CONTRACT	

Plaintiff alleges:

GENERAL FACTUAL ALLEGATION

1. Pursuant to The Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. 2205, §22050, et seq. ("Sports Act"), the United States Olympic Committee ("USOC") has exclusive jurisdiction directly or through its members over all matters pertaining to United States participation in Olympic

Games and Pan American Games. The Sports Act empowers USOC to designate a national governing body ('NGB") for each Olympic and Pan American sport. Plaintiff is the designated NGB of the sport of racquetball.

2. Plaintiff is incorporated as a nonprofit corporation under the laws of the state of Colorado, and is tax exempt under Section 501(c) of the Internal Revenue Code.

3. Plaintiff's principal office and place of business is in El Paso County, Colorado.

4. Defendant is a foreign citizen currently residing in the state of Florida.

5. This action arises from a course of conduct and business dealings (collectively "Defendant's Actions") by and between Plaintiff and Defendant and a written contract ("Sponsorship Contract"), dated December 1, 2004, entered into by and between them, a copy of which is attached as EXHIBIT 1. Defendant's Actions constituted doing business

in the State of Colorado and along with the Sponsorship Contract, subjects Defendant to the jurisdiction of this Court.

6. Plaintiff owns, organizes, promotes and sanctions certain national and international racquetball competition events, including the US Open Racquetball Championships ('US Open").

7. Plaintiff seeks and receives requests from companies and businesses to sponsor its events. Sponsors generally provide at no cost to Plaintiff, equipment, awards, clothing, other goods and money for a particular event, in return for which they receive marketing and promotional benefits.

8. Defendant contacted Plaintiff purportedly on behalf of adidas, to sponsor the US Open. Adidas is a worldwide, athletic apparel and equipment manufacturer and supplier.

9. Defendant's Actions occurred over a period of approximately July 2004 through October 2005, and were related to and in furtherance of her solicitation of the sponsorship of the US Open, purportedly on behalf of adidas.

10. Throughout the time of Defendant's Actions, she represented and held herself out to be the "Director of North American Events" for adidas. In that alleged capacity, defendant corresponded by e-mail and facsimile with plaintiff on numerous occasions for the purpose of soliciting and proposing the terms of the US Open sponsorship.

11. On certain of her written communications with plaintiff, defendant imposed an adidas registered trademark in an effort to further her purported capacity with adidas. Her use of the trademark was without the consent or knowledge of adidas.

12. Throughout Defendant's Actions and in her purported capacity with adidas, defendant provided plaintiff with copies of facsimiles, e-mails and correspondence by and among her, a "Kai Meier" and a "Sara Petersman" Defendant and such communications represented to plaintiff that Kai Meier and Sara Petersman were representatives of adidas in the respective capacities of Verauf-Strategie Direktion and

Director of Event Sponsorship from the adidas-Saloman AG world headquarters in Germany.

13. Defendant concocted, manufactured and sent to plaintiff various written communications by and among herself, Kai Meier and Sara Petersman when infact, Kai Meier and Sara Petersman do not exist.

14. Plaintiff was informed by a November 11, 2005, letter from legal counsel to the actual adidas company that defendant, Kai Meier and Sara Petersman "were not employees or agents of adidas at any time during [plaintiff's] communications with [defendant]." The adidas letter is attached as Exhibit 2.

15. Further, in the process of Defendant's Actions she represented by emails, an "Erich Stamminger" to be the Director of adidas Management Trainee Program in Germany and herself to be his goddaughter.

16. Defendant concocted, manufactured and sent e-mails under the name of Eric Stamminger, who is in fact an

employee of adidas, but is not the Director of Management Training Program and is not defendant's godfather. Upon information and belief, Mr. Stamminger was unaware of defendant's representations regarding him or Defendant's Actions.

17. Defendant made false representations and forged the related communications as to Kai Meier, Sara Petersman and Mr. Stamminger, in an effort to further Defendant's Actions and convince plaintiff of her alleged capacity with adidas.

18. During the time of Defendant's Actions, she personally met with representatives of plaintiff to discuss the US Open sponsorship by adidas.

19. Defendant's Actions were consistent with and similar to the course of conduct of other sponsors seeking sponsorships with plaintiff. There was nothing in Defendant's Actions that would indicate or cause plaintiff to believe any of defendant's statements, representations or communications were false or misleading.

20. As a result of Defendant's Actions, the Sponsorship Contract was entered into between plaintiff and purportedly adidas, by defendant.

21. Defendant's proposed sponsorship included a $75,000 payment to Plaintiff for each of the 2005 and 2006 US Open, and other contributions to the US Open.

22. On or about October 7, 2005, plaintiff first discovered by way of a phone call with legal counsel of adidas North America, that defendant and Defendant's Actions were a fraud and totally false.

23. Throughout the time of Defendant's Actions, adidas was unaware of Defendant's Actions, including her statements and representations allegedly on behalf of adidas.

24. Understandably, adidas did not fulfill its alleged obligations under the Sponsorship Contract, including the monetary payments to plaintiff.

25. As a result of Defendant's Actions, Plaintiff is in the position of conducting the 2005 and 2006 US Open without

the $75,000 for each event, which amount is a substantial sum to plaintiff and the US Open.

FIRST CLAIM FOR RELIEF

False Representation

26. The above allegations are incorporated.

27. Defendant's Actions were false, misleading, fraudulent and a lie as to past and present facts pertaining to Defendant's Actions, her alleged capacity with adidas and as to the validity of the Sponsorship Contract, which facts were material.

28. Defendant's Actions were undertaken by defendant with the knowledge that they were false.

29. Defendant's Actions were undertaken by defendant with the intent and objective that plaintiff rely upon them in entering into the Sponsorship Contract and relying upon the $75,000 to pay 2005 and 2006 US Open expenses.

30. Plaintiff reasonably and justifiably relied upon Defendant's Actions and the Sponsorship Contract.

31. Plaintiff has been damaged by its reliance upon Defendant's Actions and the Sponsorship Contract, including, but not limited to, the loss of $75,000 for each of the 2005 and 2006 US Open.

SECOND CLAIM FOR RELIEF

Nondisclosure or Concealment

32. The above allegations are incorporated.

33. Defendant concealed from and failed to disclose to plaintiff that defendant had no relationship or capacity with, did not represent and had no authority to solicit and sign the Sponsorship Contract, on behalf of adidas, which defendant had a duty to disclose to plaintiff.

34. Defendant's concealment and failure to disclose was done with the intent of creating a false impression of the actual facts in the mind of plaintiff.

35. Defendant concealed and failed to disclose such facts with the intent that plaintiff take a course of action in

entering into and relying on the Sponsorship Contract, which plaintiff would not have done if it knew the actual facts.

36. Plaintiff entered into and relied on the Sponsorship Contract in reliance on the assumption that defendant's concealment and undisclosed facts did not exist or defendant had not concealed or failed to disclose the actual and truth of such facts.

37. Plaintiff's reliance was justified.

38. Plaintiff's reliance caused damages and losses to plaintiff.

THIRD CLAIM FOR RELIEF

Breach of Contract

39. The above allegations are incorporated.

40. Defendant is individually liable for all purported adidas obligations under the Sponsorship Contract, including the payment of $75,000 for each of the 2005 and 2006 US Open.

41. Defendant breached the Sponsorship Contract by failing to perform her obligations thereunder.

42. Plaintiff has been damaged by defendant's breach.

FOURTH CLAIM FOR RELIEF

Attorney Fees

43. The above allegations are incorporated.

44. Pursuant to the Claims for Relief alleged above, Plaintiff is entitled to recover from defendant its legal fees and costs incurred as a result of Defendant's Actions and arising from this action.

WHEREFORE, plaintiff prays for judgment against defendant for all amounts and other consideration due plaintiff under the Sponsorship Contract, other damages in an amount to be determined at trial, costs, interest, attorney fees and any further relief the Court deems just and proper.

Dated: December 29, 2005. Respectfully submitted,

Enoch & Enoch, P.C.

Barton L. Enoch

Plaintiff's Address:
1685 W. Uintah
Colorado Springs, CO
80904-2906

By: /s/Barton L. Enoch
Barton L. Enoch

In accordance with C.R.C.P. 121 § 1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will, be made available for inspection by other parties or the Court upon request.

CHOICE HOTELS
INTERNATIONAL

UNITED STATES OPEN
RACQUETBALL CHAMPIONSHIPS

U.S. OPEN Racquetball Championships Presenting Sponsorship Agreement

This agreement is made and entered into as of the 1st day of December, 2004, *by* and between the U.S. OPEN RACQUETBALL CHAMPIONSHIPS directed by Ganim Enterprises, Inc., having its principal offices at 6449 Lake Trail Drive, Westerville, Ohio 43082 (hereinafter referred to as "U.S. OPEN") and adidas AG.., having its principal offices in Herzogenaurach, GERMANY (hereinafter referred to as "ADIDAS AG". The term of this agreement is for two U.S. OPEN years, expiring on December 31, 2006.

EXHIBIT 1

6449 Lake Trail Drive
Westerville, Ohio 43082

Phone: (614) 890-6073
Fax: (614) 890-9986

Therefore, the intent is for this agreement to cover the 2005 & 2006 U.S. OPEN Racquetball Championships (held in Nov. of each year).

DEFINITIONS

The U.S. OPEN is a wholly owned event property of the Unites States Racquetball Association (USRA). The USRA is a group A member of the United States Olympic Committee and therefore recognized as the national governing body for the sport of racquetball with principal offices at 1685 West Uintah, Colorado Springs, Colorado 80904. Ganim Enterprises, Inc. is the exclusive event promoter and marketing agent for the U.S. OPEN. In consideration of the mutual covenants set forth herein, the parties to this Agreement agree as follow:

ADIDAS AG will be an "Official PRESENTING Sponsor" of the U.S. OPEN Racquetball Championships for 2005 & 2006. The event will be held in Memphis during November

of each year covered by this agreement. Benefits associated with this sponsorship are as follows:

I. ADVERTISING/PROMOTIONAL

A. SIGNAGE

- Official PRESENTING SPONSOR of the **U.S. OPEN** will receive a prominent logo position on the front wall of the stadium racquetball court, ensuring extensive exposure during the television broadcasts on THE TENNIS CHANNEL. In addition, logo will be placed on the front wall of the grandstand court where other top seeded matches will take place.
- Official PRESENTING SPONSOR to receive significant on site signage for the duration of the **U.S. OPEN** (4 venues).
- Official PRESENTING SPONSOR to receive logo identification on large on-site spectator draw-board at the **U.S. OPEN.**

- Official PRESENTING SPONSOR to receive logo identification on all U.S. OPEN spectator admission tickets, staff credentials, and VIP credentials.

B. MEDIA/PRINT/TALK /PROMOTIONAL

- Prominent logo position as PRESENTING Sponsor on **U.S. OPEN** posters which will be distributed to all racquetball clubs in the U.S.
- Front page logo position on all ticket applications and **U.S. OPEN** vacation planers
- Front page logo position within the **U.S. OPEN** Official Tournament Program
- Prominent logo position on all promotional advertisements for the **U.S. OPEN**
- Prominent logo position on all community billboards promoting the **U.S. OPEN**
- Official PRESENTING SPONSOR will be listed in all **U.S. OPEN** media releases and press kits. Further,

logo will appear on the front cover of the official U.S. OPEN Media Guide.

- Official PRESENTING SPONSOR to receive two (2) full page four color ads (premium positions) in the **U.S. OPEN** Official Tournament Program.
- Official PRESENTING SPONSOR to receive regular public address service announcements acknowledging their support of the **U.S. OPEN**
- PRESENTING sponsor will receive significant exposure in all official USRA publications including major recognition in the racquetball industry's leading medium-**Racquetball Magazine.**
- PRESENTING Sponsor will receive *two* (2) thirty second commercial spots in each U.S. OPEN match broadcast on THE TENNIS CHANNEL (minimum of five matches aired three times each for a total of 30 commercial spots guaranteed).

II. TOURNAMENT/ENTERTAINMENT BENEFITS

- Official PRESENTING SPONSOR to receive 24 VIP passes for unlimited universal access to all matches and special functions throughout the **U.S. OPEN.**
- Official PRESENTING SPONSOR to receive two (2) Premier Luxury Boxes directly against the Stadium Racquetball Court (prime location on Back Wail) complete with two tables and seating for 8 at the **U.S. OPEN**. Boxes includes eight Gold All Access credentials (transferable passes).
- Official PRESENTING SPONSOR to receive one complimentary 10' x 10' trade show booth in the **U.S. OPEN** Hospitality Village.
- Official PRESENTING SPONSOR to have the opportunity to provide promotional literature for insert in all spectator and amateur registration packages at the **U. S. OPEN**

- Official PRESENTING SPONSOR to receive 6 invitations to the **U.S. OPEN** Sponsor Appreciation Party.
- Official PRESENTING SPONSOR to receive 16 tickets to the **U.S. OPEN** Party with the Pro's to be held Saturday evening during the event each year.

III. CUSTOMIZED BENEFITS FOR ADIDAS

- ADIDAS AG will be designated as the "Official Footwear" and "Official Apparel" of the US OPEN Racquetball Championships. Further, ADIDAS AG will have the exclusive rights in the apparel/footwear category to use the US OPEN logo for the promotion of these designations.
- ADIDAS AG will have the exclusive right to outfit all tournament staff members with footwear and apparel to be worn during all hours of the event.

- ADIDAS AG will have the right to provide promotional apparel items in all player registration bags (850 players).

ADIDAS AG will provide the following support as a major PRESENTING Sponsor of the U.S. OPEN RACQUETBALL CHAMPIONSHIPS:

Year 1 - 2005: US$75,000

Year 2 - 2005: US$75,000

Sponsorship fees will be due 30 days prior to the event each year. The term of this Agreement shall be for two U.S. OPEN years, commencing December 1, 2004 and ending November 30th, 2006. The U.S. OPEN will be held in November of each year at the Racquet Club of Memphis. Therefore, this Agreement intends to cover the 2005 & 2006 U.S. OPEN events. In addition, ADIDAS AG will have the first right of refusal to retain an exclusive PRESENTING Sponsorship position at the conclusion of this agreement, at terms to be determined in 2006.

It is understood that the U.S. OPEN agrees to indemnify and hold ADIDAS AG, its officers, employees, or representatives harmless from every claim, expense, demand, liability, or judgment of every kind, nature, and description arising out of or in connection with any work or obligation undertaken or required by this Agreement. Further, the U.S. OPEN agrees to list ADIDAS AG as an additional insured on the event's liability coverage.

adidas AG

Mailing
Address: *KAISER HAUS STR. 87*
HERZOGEN AURACH, DEUTSCHLAND
Contact Name *KAI W. MEIER* Phone _____
E-Mail *AND* Fax _____
RAMONA VON ONDARZA - HAUPTKENTAKT

This Agreement is hereby agreed to and accepted by both the U.S. OPEN and ADIDAS AG as indicated by their signatures below:

adidas AG

By: *KAI W. MEIER* Date: *7 JULI 04*
Name *K W MEIER*
Title *VERAUF-STRATEGIE DIREKTION*

U.S. OPEN RACQUETBALL CHAMPIONSHIPS

By: *Douglas J. Gamin* Date: *6/16/04*
Douglas J. Ganim, Director

adidas

November 11,2005

Via Facsimile and Overnight Mail
Doug Ganim
6449 Lake Trait Drive
Westerville, OH 43082

Re: Ramona von Ondarza

Dear Doug:

This Letter confirms that Ramona von Ondarza, Kai Meyer, and Sara Petersman were not employees or agents of adidas at any time during your communications with them.

f you require additional information, please do not hesitate to contact me.

Very truly yours,

Kurt Tandan

Kurt Nath Tandan
Associate General Counsel

EXHIBIT 2

adidas
Legal Department
5055 N. Greeley Avenue
Portland, Oregon 97217 USA
T +1 971 234 2300
F +1 971 234 4420

APPENDIX B

District Court, El Paso County, CO 20 E. Vermijo Colorado Springs, CO 80903 719-448-7577	
PLAINTIFF: USA Racquetball a/k/a United States Racquetball Association, d/b/a US Open Racquetball Championships DEFENDANT: Ramona von Ondarza	
Barton L. Enoch (#8099) Enoch & Enoch, P.C. P.O. Box 1539 Colorado Springs, CO 80901-1539 719-475-1140/Fax 719-475-0114 benoch@enochenoch.com	Case No: 05CV4849 Div. 3 Ctrm:406
RETURN OF SERVICE	

STATE OF *Florida*)
)
COUNTY OF *Palm Beach*)

I declare under oath that I served the CIVIL CASE COVER SHEET, SUMMONS, AND COMPLAINT in Case No. 05CV4849, District Court, on defendant Ramona von Ondarza in *Palm Beach* County, *Florida*, on *February 13*, 2006, at *11:50* a.m. at the following locations: *J. Alexanders Restaurant, Glades Road, Boca Raton, Florida*

App. B

✓ by handing it to a person identified to me as the defendant.

____ by leaving it with the defendant who refused service.

____ by leaving it with _____ designated to receive service for the defendant.

____ I am over the age of 18 and am not interested in nor a party to this case.

____ I attempted to serve the defendant on ___ occasions but have not been able to locate the defendant.

Return to plaintiff is made on *February 16, 2006*.

_____
Name: *Jonathan Levy*

Signed under oath before me on this *16* day of *February*, 2006.

E'lyn-Carole Bryan

Commission #DD141572

Expires Sep. 18, 2006

Bonded Thru

Atlantic Bonding Co., Inc.

Notary Public

✓ Private process server

___ Sheriff, _____ County

Service $_____

Mileage $_____

My commission expires:_____

Dated: *2-21-06*

Respectfully submitted,

Enoch & Enoch, P.C.

Barton L. Enoch

By: /s/Barton L. Enoch
Barton L. Enoch

In accordance with C.R.C.P. 121 § 1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will, be made available for inspection by other parties or the Court upon request.

APPENDIX C

DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 20 East Vermijo Avenue Colorado Springs, CO 80903 (719) 448-7577	
Plaintiff: USA RACQUETBALL a/k/a UNITED STATES RACQUETBALL ASSOCIATION, d/b/a US OPEN RACQUETBALL CHAMPIONSHIPS v. **Defendant:** RAMONA von ONDARZA	**▲COURT USE ONLY▲** Case Number: 05-CV-4849 Div.: 3 Ctrm.: 406
Attorneys for Defendant: Brett N. Huff, #32071 White and Steele, P.C. 950 17th Street, 21st Floor Denver, Colorado 80202-2804 (303) 296-2828 bhuff@wsteele.com	
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION	

Defendant Ramona Von Ondarza, a foreign citizen residing in Florida, by and through her attorneys, White and Steele, P.C., and making a special appearance for that purpose, moves that the Complaint filed herein by the plaintiff be dismissed for the following reasons:

App. C

1. Pursuant to C.R.C.P. 12(b)(2), this Court lacks personal jurisdiction over the defendant, in that the defendant has committed no acts within Colorado that subject her to jurisdiction under the Colorado long-arm statute, C.R.S.§13-1-124, and that the defendant does not have minimum contacts with Colorado, and it would therefore deprive the defendant of due process of law to have to defend herself in a court in this state.

2. Defendant files concurrently herewith and incorporates herein by reference her Memorandum of Law in support of this Motion.

WHEREFORE, defendant respectfully moves the Court to dismiss the Complaint filed herein at plaintiff's costs.

Dated this 29th day of March, 2006.

Respectfully submitted,

SIGNATURE OF BRETT N. HUFF ON FILE AT THE OFFICES OF WHITE AND STEELE, P.C.

By: *Brett N. Huff*
Brett N. Huff, #32071
WHITE AND STEELE, P.C.

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 29, 2006, a true and correct copy of the foregoing was electronically filed with LexisNexis and served upon the following:

Barton L. Enoch, Esq.
Enoch & Enoch, P.C.
P.O. Box 1539
Colorado Springs, CO 80901-1539

Charlene Falk
For White and Steele, P.C.

APPENDIX D

DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 20 East Vermijo Avenue Colorado Springs, CO 80903 (719) 448-7577	
Plaintiff: USA RACQUETBALL a/k/a UNITED STATES RACQUETBALL ASSOCIATION, d/b/a US OPEN RACQUETBALL CHAMPIONSHIPS v. **Defendant:** RAMONA von ONDARZA	**▲COURT USE ONLY▲** Case Number: 05-CV-4849 Div.: 3 Ctrm.: 406
Attorneys for Defendant: Brett N. Huff, #32071 White and Steele, P.C. 950 17th Street, 21st Floor Denver, Colorado 80202-2804 (303) 296-2828 bhuff@wsteele.com	
MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS	

Defendant Ramona Von Ondarza, a foreign citizen residing in Florida, by and through her attorneys, White and Steele, P.C., and making a special appearance for that purpose, respectfully moves this Honorable Court, pursuant to Rule 12(b)(2) of the Colorado Rules of Civil Procedure,

for an Order quashing service of the Summons and Complaint upon her for lack of personal jurisdiction and dismissing this case.

This court lacks personal jurisdiction over the defendant because she does not live in Colorado, she has no contacts with Colorado, and because the plaintiff's claims against the defendant do not arise out of contacts by the defendant with Colorado. Neither the Colorado long-arm statute nor due process supports jurisdiction over Ms. Von Ondarza, and this case therefore should be dismissed pursuant to C.R.C.P. 12(b)(2).

I. FACTS

Plaintiff is a Colorado Nonprofit Corporation with a principal place of business at 1685 West Uintah Street, Colorado Springs, Colorado, 80904. (Plaintiff's Complaint for Fraud and Breach of Contract, hereinafter "Complaint," ¶ 3.) It is in the business of organizing, promoting and sanctioning certain racquetball competitions, including

seeking and receiving sponsors for these events. (Complaint, ¶¶ 6-7.) It filed the Complaint in this matter in this Court and against defendant, Ramona Von Ondarza, who is not a resident of Colorado and who is a foreign citizen currently residing in the state of Florida. (Complaint, ¶ 4); see also Affidavit of Ramona Von Ondarza, attached as Exhibit A. Ms. Von Ondarza has never lived in Colorado, she has no property in Colorado, and she has no connections or contacts in Colorado. Exhibit A.

Plaintiff alleges, inter alia, that it contracted with Ms. Von Ondarza in connection with a "Sponsorship Contract" for the U.S. Open. (Complaint, ¶¶ 5-8.) Plaintiff also attached a copy of this "Sponsorship Contract" to its Complaint in support of these allegations as Exhibit 1. Contrary to plaintiff's allegations, review of this contract shows that plaintiff was not a party to it. The parties to the contract are "the U.S. OPEN RACQUETBALL CHAMPIONSHIPS directed by Ganim Enterprises, Inc.,

having its principal offices at 6449 Lake Trail Drive, Westerville, Ohio 43082" and "adidas AG.., having its principal offices in Herzogenaurach, GERMANY". (Sponsorship Contract, p. 1.) By the very clear and unambiguous language of this Sponsorship Contract, Ganim Enterprises, Inc. and presumably its president, Douglas Ganim, are domiciled in Westerville, Ohio. Id. The Colorado Secretary of State reports that Ganim Enterprises, Inc., is not even a Colorado Corporation, nor is it registered with the Colorado Secretary of State to transact business in Colorado.

Ms. Von Ondarza never signed the Sponsorship Contract. Exhibit A. A simple review of the Sponsorship Contract confirms the same. Not only did Ms. Von Ondarza not sign this contract, but she never came to Colorado to sign it or conduct business with plaintiff. Exhibit A. In fact, Ms. Von Ondarza has visited Colorado on only two occasions, neither of these visits related to the allegations contained in

the Complaint. Exhibit A. Moreover, this Sponsorship Contract does not contain a choice of forum provision which would operate to provide jurisdiction to this Court over this dispute.

Finally, the 2005 and 2006 U.S. Open tournaments, which are the subjects of the contract, did not occur in Colorado, but in Memphis, Tennessee. Exhibit A.

II. STANDARD OF REVIEW

This Court must dismiss the defendant from this suit if it finds that, as a matter of law, it lacks personal jurisdiction over her. See C.R.C.P. 12(b)(2). C.R.C.P. 12(b)(2) is virtually identical to its federal counterpart and Colorado courts may turn to federal precedent for guidance in clarifying procedure for addressing a 12(b)(2) motion to dismiss.

A plaintiff seeking to invoke a Colorado court's jurisdiction over a non-resident defendant must comply with the requirements of the Colorado's long-arm statute and

constitutional due process. See Keefe v. Kirshenbaum & Kirschenbaum, P.C., 40 P.3d 1267, 1270 (Colo. 2002). Since "Colorado's long-arm statute is coextensive with constitutional limitations imposed by the due process clause, . . . if jurisdiction is consistent with the due process clause, [then] Colorado's long-arm statute authorizes jurisdiction over a nonresident defendant." Benton v. Cameco Corp., 375 F.3d 1070, 1075 (10th Cir. 2004); Day v. Snowmass Stables, Inc. et al., 810 F.Supp. 289, 291 (D.Colo 1993) ("Colorado's long-arm statute is coextensive with constitutional limitations imposed by the due process clause"); Shepherd v. United States Olympic Comm. et al., 94 F. Supp. 2d 1136, 1140 (D.Colo. 2000) (same). Due process requirements are satisfied only when minimum contacts with the state exist such that the assertion of jurisdiction would not offend "traditional notions of fair play and substantial justice." See International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). The "minimum contacts" standard may be met in

two ways, either by the establishment of specific or general jurisdiction.

When a state exercises jurisdiction over a nonresident defendant in a suit arising out of or related to the defendant's contacts with the forum, the state is exercising specific jurisdiction over the defendant. See Benton v. Cameco Corp., 375 F.3d at 1075. General jurisdiction, however, refers to suits neither arising out of nor related to the defendant's contacts, and it is permitted only where the defendant has carried on its activities in the forum state with a fair measure of permanence and continuity, not occasionally or casually. See id.; see also Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408 (1984) (requiring "continuous and systematic" contacts with the forum for the assertion of general jurisdiction). For a finding of general jurisdiction, "courts impose a more stringent minimum contacts test," and require an even greater affiliation with the forum. Benton v. Cameco Corp., 375

F.3d at 1080; Kuenzle v. HTM Sport-Und Freizeitgerte AG, 102 F.3d 453, 458 (10th Cir. 1996).

III. ARGUMENT

A. THIS COURT MAY NOT EXERCISE GENERAL JURISDICTION OVER DEFENDANT.

On the facts of this case, there is no basis for the Court to exercise general jurisdiction over Ms. Von Ondarza. A defendant's activities in the forum state must be substantial, systematic, and continuous, in order for a Colorado court to exercise general jurisdiction over her as to any cause of action against her, even those unrelated to their contacts with the forum. See, e.g., Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 416 (1984); Burger King, 471 U.S. at 472, 472 n.15; Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 446 (1952). Ms. Von Ondarza simply does not have the substantial, systematic, and continuous contacts with the State of Colorado necessary for the exercise of general jurisdiction. At all times relevant, she

resided in Florida, she has never lived in Colorado and has only visited Colorado on two occasions, which were not related this matter. Ms. Von Ondarza does not have any property in Colorado, nor does she have connections or contacts in Colorado. Moreover, she has never been licensed to conduct business in Colorado, she has never come to Colorado to transact any business, she has never paid taxes in Colorado, and she has never been involved in litigation in Colorado. Furthermore, she has never intended to avail herself of the laws and protections of the State of Colorado. Exhibit A.

Not only are there insufficient contacts between Ms. Von Ondarza and the State of Colorado, but the subject "Sponsorship Contract" was not executed by plaintiff or defendant or even a Colorado resident. It was executed by Douglas L. Ganim of Ganim Enterprises, Inc., in Westerville, Ohio and Kai W. Meier of Herzogenaurach, Deutschland. (Complaint, Exhibit 1.) Certainly, whoever signed this

Sponsorship Contract did not do so in the State of Colorado, but in Ohio and Germany or elsewhere.

Finally, the subject of the Sponsorship Contract is the US Open event for the 2005 and 2006 Championships. These events did not even occur in Colorado, but in Memphis, Tennessee. Exhibit A. Since none of the parties to this Sponsorship Contract reside in Colorado and it was not signed in Colorado and the subject events of the contract did not occur in Colorado, there is no basis for the Court to exercise jurisdiction in this case.

It is well settled that on these facts, a defendant cannot be subject to general jurisdiction. See, e.g., Helicopteros, 466 U.S. at 416 (Texas did not have general jurisdiction over foreign corporations that sent officer to Texas to negotiate a contract to provide helicopter transportation to a Texas joint venture, accepted checks drawn from a Texas bank, purchased equipment and helicopters from a Texas corporation, and sent personnel to

Texas for training); Shepherd v. United States Olympic Comm. et al., 94 F. Supp. 2d 1136, 1141 (D. Colo. 2000) (finding defendant's contacts with Colorado insufficient to support general jurisdiction because defendant was not a Colorado corporation, did not have a bank account, telephone listing, or mailing address in the state, did not conduct business nor was qualified to do so in the state, had no officers or employees in Colorado and did not pay taxes there); Bearry v. Beech Aircraft Corp., 818 F.2d 370, 375-76 (5th Cir. 1987) (Texas did not have general jurisdiction over Beech, a nonresident defendant, even though Beech manufactured and sold $250 million in products to Texas dealers over five years, occasionally visited Texas dealers to assist with maintenance problems, demonstrate new aircraft, and offer sales incentives); Rocke v. Canadian Auto. Sport Club, 660 F.2d 395, 397-99 (9th Cir. 1981) (race car driver injured in crash during race in Quebec sued two Canadian sports car clubs that sponsored race; even though the clubs

sent observers to races in California and solicited California race drivers by maintaining a mailing list of them and sending them technical regulations, solicitations to participate in specific events, and press-style updates on the progress of competition, the court held "without hesitation" that the two clubs were not subject to general jurisdiction, emphasizing that neither club maintained a regular place of business in California or conducted business in California); Nichols v. G.D. Searle & Co., 991 F.2d 1195, 1198-1200 (4th Cir. 1993) (finding no general jurisdiction over a defendant that employed thirteen forum residents as sales representatives and one as district manager, held district meetings in the forum three times per year, held regional and national meetings twice per year, and sold $9 million to $13 million in products); Glater v. Eli Lilly & Co., 744 F.2d 213, 216-17 (1st Cir. 1984) (finding no general jurisdiction over defendant who advertised, employed 8 sales representatives, and sold products in the forum state); Ratliff v. Cooper Labs,

Inc., 444 F.2d 745, 748 (4th Cir. 1971) (finding no general jurisdiction when the defendant did no more than advertise in national journals which made their way into the forum state and employ salesmen in the forum state); Modern Mailers, Inc. v. Johnson & Quin, Inc., 844 F. Supp. 1048, 1052-55 (E.D. Penn. 1994) (finding no general jurisdiction over corporation that sold over $230,000 of its products to approximately twenty-nine customers in the forum and who had sales representatives who included the forum in their territories).

For these reasons, the defendant is not subject to the general jurisdiction of Colorado courts.

B. THIS COURT MAY NOT EXERCISE SPECIFIC JURISDICTION OVER DEFENDANT.

There is also no basis for the exercise of specific jurisdiction over Ms. Von Ondarza. Both the Colorado long-arm statute and the due process clause of the Fourteenth Amendment require that a non-resident defendant "have

certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). "The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful contacts, ties, or relations.'" Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471-72 (1985) (quoting International Shoe, 326 U.S. at 319). The defendant must have had "fair warning" that his relation with the forum state might subject him to jurisdiction there -- that his "conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." Id. at 472, 474 (quoting World-Wide Volkswagen Corp. v. Woodson (1980) 444 U.S. 286, 297). There must be "'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum

State, thus invoking the benefits and protections of its laws.'" Id. at 475 (quoting Hanson v. Denckla (1958) 357 U.S. 235, 253).

Here, Ms. Von Ondarza has insufficient contacts with Colorado relating to the claims in this case to permit the assertion of specific jurisdiction over her. Indeed, Ms. Von Ondarza has no contacts with Colorado relating to the claims in this case. For a Colorado court to exercise specific jurisdiction over Ms. Von Ondarza, due process requires that once the plaintiff meets the burden of establishing minimum contacts over the non-resident defendant, the court must then ascertain whether the assertion of jurisdiction would conform with "fair play and substantial justice." The relationship between the defendant and Colorado must be such that it is reasonable to require the defendant to defend the particular suit which is brought there. In determining whether an exercise of jurisdiction is reasonable in light of the circumstances surrounding the case, the court may consider:

> (a) the burden on the defendant, (b) the forum state's interest in resolving the dispute, (c) the plaintiff's interest in receiving convenient and effective relief, (d) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (e) the shared interest of the several states in furthering fundamental social policies.

Benton v. Cameco Corp., 375 F.3d 1070, 1078 (10th Cir. 2004).

Applying the Benton considerations proves it is unreasonable for Ms. Von Ondarza to defend this case in this forum. First, it would pose a great financial burden and be unbearably time-consuming for Ms. Von Ondarza to have to travel from her residence in Florida to Colorado to defend this lawsuit. Second, the State of Colorado should have no interest in resolving a dispute regarding an alleged breach of contract that plaintiff did not sign, but instead, was signed by an Ohio resident and a resident of Germany, regarding two events that occurred or will occur in Memphis, Tennessee.

Third, the plaintiff did not sign the contract. It was entered into by Ganim Enterprises, Inc. whose principal place of business is Westerville, Ohio, and Kai Meier of Germany. Plaintiff probably does not have any right to maintain this lawsuit, as it appears that Ganim Enterprises is the proper party and, therefore, plaintiff should not have any expectation of receiving convenient and effective relief. Fourth and fifth, this case, if it is to be brought and adjudicated, should be brought in state or federal court in Florida, Ohio or Tennessee, where at least there would be a state and judicial system with an interest in resolving this controversy and further fundamental social policies.

As already shown, Ms. Von Ondarza has not "purposefully directed" any actions toward Colorado and has not invoked "the benefits and protections of the laws of the state." Since the exercise of jurisdiction over Ms. Von Ondarza by a Colorado court based on these facts would

offend "traditional notions of fair play," she should not be subject to this court's jurisdiction.

IV. CONCLUSION

For these reasons, Ms. Von Ondarza moves this Honorable Court to quash service of the Summons and Complaint upon her for lack of personal jurisdiction and to dismiss this case.

Dated this 29th day of March, 2006.

Respectfully submitted,

SIGNATURE OF BRETT N. HUFF ON FILE AT THE OFFICES OF WHITE AND STEELE, P.C.

By: *Brett N. Huff*
Brett N. Huff, #32071
WHITE AND STEELE, P.C.

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 29, 2006, a true and correct copy of the foregoing was electronically filed with LexisNexis and served upon the following:

Barton L. Enoch, Esq.
Enoch & Enoch, P.C.
P.O. Box 1539
Colorado Springs, CO 80901-1539

Charlene Falk
For White and Steele, P.C.

DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 20 East Vermijo Avenue Colorado Springs, CO 80903 (719) 448-7577	
Plaintiff: USA RACQUETBALL a/k/a UNITED STATES RACQUETBALL ASSOCIATION, d/b/a US OPEN RACQUETBALL CHAMPIONSHIPS v. **Defendant:** RAMONA von ONDARZA	**▲COURT USE ONLY▲** Case Number: 05-CV-4849 Div.: 3 Ctrm.: 406
Attorneys for Defendant: Brett N. Huff, #32071 White and Steele, P.C. 950 17th Street, 21st Floor Denver, Colorado 80202-2804 (303) 296-2828 bhuff@wsteele.com	
AFFIDAVIT OF RAMONA VON ONDARZA	

I, Ramona Von Ondarza, being first duly sworn, depose and state as follows:

1. I am the named defendant in the above-captioned lawsuit.

2. I am not a citizen of the United States.

EXHIBIT A

3. I am a citizen of Venezuela and Germany, but I currently live in Boca Raton, Florida.

4. I have no connections with the State of Colorado, I have never lived in Colorado and I have only visited Colorado briefly on two occasions: once in December 1994 and once in March 2001. Neither one of these visits were for the purposes of conducting business.

5. I have never come to Colorado to meet with plaintiff, to conduct business with plaintiff or solicit business from plaintiff.

6. I do not own any property in Colorado and I have never paid taxes to the State of Colorado.

7. I have never been licensed to conduct business in Colorado.

8. I have never availed myself of the laws and protections of the State of Colorado nor have I ever intended to do so.

9. I did not sign the "Sponsorship Agreement" that is attached to the Complaint in this matter.

10. On information and belief, the 2005 and 2006 U.S. Open Racquetball tournaments occurred or will occur in Memphis, Tennessee.

FURTHER AFFIANT SAYETH NAUGHT.

Ramona von Ondarza
RAMONA VON ONDARZA

STATE OF FLORIDA)
) ss.
COUNTY OF *PALM BEACH*)

Subscribed and sworn to before me this *27* day of *MARCH*, 2006. Witness my hand and official seal.

My commission expires: *Aug. 27, 2009*.

Michael Bady
Notary Public
Address: *21218 St. Andrews Blvd*
Boca Raton Fl. 33433

SEAL
[*seal*]

APPENDIX E

District Court, El Paso County, CO 20 E. Vermijo Colorado Springs, CO 80903 719-448-7577	
PLAINTIFF: USA Racquetball a/k/a United States Racquetball Association, d/b/a US Open Racquetball Championships DEFENDANT: Ramona von Ondarza	COURT USE ONLY
Barton L. Enoch (#8099) Enoch & Enoch, P.C. P.O. Box 1539 Colorado Springs, CO 80901-1539 719-475-1140/Fax 719-475-0114 benoch@enochenoch.com	Case No: 05CV4849 Div. 3 Ctrm:406
PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION	

Plaintiff respectfully responds to defendant's motion to dismiss for lack of personal jurisdiction, as follows;

FACTS

Contrary to the motion, the subject contract attached to the complaint as Exhibit 1, is between plaintiff and purportedly adidas. The contract states in the Definitions

section that the U.S. Open is owned by plaintiff. The U.S. Open is a name under which plaintiff does business. See, case caption above. Ganim Enterprises, Inc., is the promoter of the event, not its owner. Mr. Ganim signed the contract on behalf of plaintiff doing business under the name of U.S. Open Racquetball Championships. Complaint, Exhibit I; *See also*, attached affidavits of Doug Ganim and Jim Hiser. All funds to be paid under the contract would be paid to the U.S. Open, which is plaintiff. Moreover, all funds to be paid under the contract are payable to plaintiff under its name of U.S. Open Racquetball Championships and would have been deposited, disbursed and managed by plaintiff through its Colorado Springs office and bank accounts in Colorado Springs. The injury, damage and loss from defendant's tortuous actions have been suffered by plaintiff in Colorado. Ganim affidavit.

Defendant claims the person purporting to sign the contract for adidas is a resident of Germany and yet provides

no supporting facts or statements in her affidavit attached to the motion. While defendant does claim by her affidavit that she did not sign the contract, she fails to refute the fact that on page four of the contract she is written in as a contact for adidas. Moreover, she does not refute or deny any of her other actions alleged in the complaint.

Finally, defendant is and has been since 1998, a member of plaintiff and a lifetime member since 2003. *See*, attached affidavit of Kevin Joyce. This was not alleged in the complaint as plaintiff had not considered it at the time of filing or that defendant would deny any contact with Colorado. Defendant's affidavit is as to her lack of contacts with Colorado is not true. For 8 years she has been a member of plaintiff, a Colorado nonprofit corporation with its offices in Colorado. She has likewise for 8 years been a party to the bylaws of plaintiff, which is a Colorado membership organization.

Defendant has applied for membership in Colorado, her membership application was sent to Colorado to be processed and her membership issued in Colorado. In addition, her membership fee was paid to plaintiff in Colorado. Joyce affidavit. Defendant simply cannot say she has absolutely no connection to Colorado. It is also not true for her to say she has never availed herself of the laws and protections of Colorado and never intended to do. Defendant's affidavit, ¶8. Since 1998, as a member of plaintiff, she has been a party to plaintiffs bylaws governed by Colorado law. As a member of plaintiff she availed herself of the benefits and rights under plaintiff's bylaws for the last 8 years. Finally, she has take advantage of her membership by competing on plaintiff's Women's Pro Tour and winning cash for her victories. Joyce affidavit.

LEGAL ARGUMENT

The motion differentiates between general and specific jurisdiction and appropriately cites Burger King v.

Rudzewicz, 471 U.S. 462, 473 n. (1985), which supports specific jurisdiction over defendant in that it does not arise from nor is related to defendant's specific contacts with Colorado. Colorado has followed this rule. *See e.g.*, Keefe v. Kirschenbaum & Kirschenbaum. P.C., 40 P.3d 1267, 1271, (Colo.2002); Waterval v. District Court, 620 P.2d 5 (Colo.1980). Therefore, defendant's denial of any contact with Colorado, while inaccurate, is not the determining factor for specific jurisdiction.

The complaint, as verified by Mr. Ganim's affidavit, alleges defendant committed certain intentional torts. The injured party is plaintiff and the injury was and continues to be suffered in Colorado. Ganim affidavit. The United States Supreme Court addressed the issue of what contacts are necessary to satisfy due process in the context of an intentional tort. In Calder v. Jones, 465 U.S. 783 (1984), the Court approved an "effects" test and held that, where a defendant's intentional, and allegedly tortuous actions,

occurring outside the forum, are expressly directed at causing a harmful effect within the forum state, a sufficient nexus exists between the defendant and the state so as to satisfy due process. D & D Fuller CATV Constr. Inc., v. Pace, 780 P.2d 520, 524 (Colo.1989). *See* Classic Auto Sales, Inc. v. Schocket, 832 P.2d 233, 237 (Colo.1992) (in "appropriate circumstances court may conduct abbreviated minimum contracts analysis where commission of tort forms basis for jurisdiction"). As a result of her membership in plaintiff since 1998 and lifetime membership since 2003, defendant cannot claim ignorance that plaintiff is located in Colorado and that the failure of plaintiff to receive the $150,000 due under the contract would injure, damage and cause a loss to plaintiff.

The situs of the injury from an intentional tort is the place of the commission of the tortuous act for purposes of long arm jurisdiction. Vandermee v. District Court, 433 P.2d 335 (1967); Schocket v. Classic Auto Sales, Inc., 817 P.2d 561 (Colo.App.1991), affirmed 832 P.2d 233 (Cob. 1992);

Pace v. D & D Fuller CATV Constr. Inc., 748 P.2d 1314 (Colo.App.1987), affirmed 780 P.2d 520 (Colo.1989). Defendant's only sworn statement in opposition to the tort allegations is that she did not sign the contract. Indeed, given the very specific acts alleged in the complaint and all her e-mails and communications with Mr. Ganim, she would be hard pressed to deny the actions under oath. Therefore, the complaint as verified by Mr. Ganim is unopposed for purposes of defendant's motion. As plaintiff was injured in Colorado, defendants tortuous acts are deemed to have occurred in Colorado for purposes of personal jurisdiction in this action.

Furthermore, the test for jurisdiction based on an intentional tort is less stringent than the three-part test under Van Schaack & Co. v District Court, 538 P.2d 425 (Colo. 1975). *See* Colorado Panos Inv. Co. v. District Court, 662 P.2d 180 (Colo.1983) (the single act of a guarantee by a nonresident of a note payable in Colorado was sufficient to

confer personal jurisdiction since to require a guarantor to defend in the courts of the state where the guaranteed obligation is payable is fully consistent with "traditional notions of fair play and substantial justice). "The contacts of Panos Investment Company with the State of Colorado, as alleged in the complaint, are adequate to meet the requirements of Van Schaack & Co. v. District Court, supra, and of the decisions of the United States Supreme Court from which the Van Schaack test was derived. See Hanson v. Denckla, 357 U.S. 235,78 S. Ct. 1228,2 L. Ed. 2d 1283 (1958); McGee v. International Life Insurance Co., 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957)." Panos Inv. Co. v. District Court of County of Larimer, 662 P.2d 180, 183 (Cob. 1983). In this action, the tortuous acts are so grievous, intentional and substantial that as a matter of law they alone confer jurisdiction over defendant.

Defendant has also has material and consistent ties to Colorado. As a corporation, plaintiff has bylaws, which are a contact between plaintiff and its members

and are governed by Colorado law. Laybourn v. Wrape, 211 P. 367, 369 (Colo. 1922) (bylaws are a contract between a corporation and its shareholders); Fort Lyon Canal Co. v. Catlin Canal Company, 642 P.2d 501, (Colo. 1982) (bylaws are a contract between a corporation's shareholders or members);506; Vikman v. International Brotherhood Of Electrical Workers, 889 P.2d 646, 668 (Cob. 1995) (bylaws of a labor union are a contact with its members). Plaintiff has taken advantage of the bylaws and her membership in plaintiff to compete in events and win cash that she would not have the right to do but for her membership.

CONCLUSION

Plaintiff respectfully submits that based on the foregoing facts and law, the Court should find it has personal jurisdiction over defendant and the motion should be denied.

Dated: April 13, 2006.

Respectfully submitted,

Enoch & Enoch, P.C.

Barton L. Enoch

By: /s/Barton L. Enoch
Barton L. Enoch

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2006, a copy of the foregoing was e-served on:

Brett N. Huff
White and Steele, P.C.
950 17" Street, 21st Floor
Denver, CO 80202-2804

Barton L. Enoch

By: /s/Barton L. Enoch
Barton L. Enoch

In accordance with C.R.C.P. 121 § 1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.

AFFIDAVIT OF DOUG GANIM

I, Doug Ganim, being first duly sworn, deposes and states as follows:

1. The facts stated in this affidavit are known to me personally and are true to the best of my knowledge.

2. I am the President of Ganim Enterprises. Inc. Ganim Enterprises is the promoter of an event know as the U.S. Open Racquetball Championships (US Open). The name U.S. Open Racquetball Championships is a trade name of USA Racquetball, a Colorado nonprofit corporation (USAR) with its principal and only office at 1685 West Uintah, Colorado Springs, El Paso County, Colorado. The US Open event itself is the property of and owned by USRA. The bank account for the US Open is a USRA account located In Colorado Springs, Colorado. All funds payable to US Open are payable to USAR in Colorado Springs, Colorado and all expenses of the US Open are paid from USAR's offices in Colorado Springs.

3. Attached as Exhibit 1 to the complaint in Case No. 05CV4849, El Paso County, Colorado, District Court, is a true and accurate copy of the contract (contract) at issue in this action and which was negotiated, prepared and signed by and through the intentional, fraudulent and deceptive acts of defendant, Romana von Ondarza.

4. Attached as Exhibit 2 to the complaint is a true and accurate copy of a letter from adidas dated November 11, 2005. I requested the letter to document adidas' statement that Romana von Ondarza, Kai Meyer (sic) and Sara Petersman were not employees or agents of adidas with respect to the contract. Nevertheless, the contract falsely Identities Ms. von Ondarza and Ms. Meier as the contacts for adidas and Ms. Meier as having signed the contract for adidas. Contract, p 4.

5. The allegations of the complaint are true and accurate. including the fact that the contract was proposed to USAR and negotiated by Ms. von Ondarza and at all times

Ms. von Ondarza held herself out to be the adidas Director of North American Events.

6. - USAR is the party that has and will continue to suffer the loss, damage and injury from Ms. von Ondarza actions and nonpayment of the contract. The loss, damage and injury is to the financial condition of USAR in Colorado and its ability to fund the US Open event from its Colorado bank account.

Dated: April *13*, 2006.

Doug Ganim
Doug Ganim

Subscribed and sworn to before me on April *13th*, 2006, by Doug Ganim.

My commission expires:

Daniel Mercer
Notary Public

Daniel Mercer
Notary Public, State of Ohio
My commission expires Dec. 6, 2006

AFFIDAVIT OF KEVIN JOYCE

I, Kevin Joyce, being first duly sworn, deposes and states as follows:

1. The facts stated in this affidavit are known to me personally and are true to the best of my knowledge.

2. I am the Director of Membership of USA Racquetball, a Colorado nonprofit corporation (USAR) and have held that position since August 1, 1991. In my position with USRA I have direct and personal knowledge of the membership records of USRA.

3. USAR is a membership organization. Its members voluntarily join USAR in part to obtain a USAR license allowing them to compete in USAR sanctioned or permitted racquetball events and to receive certain other benefits provided by USAR to its members. To become a member of USAR one must complete a standard USAR membership application, submit it to the Colorado Springs office of USRA and pay a fee. Upon becoming a member of

USRA, the individual is subject to and must abide by the bylaws, rules and regulations of USAR.

4. The principal and only office of USRA is at 1685 West Uintah, Colorado Springs, El Paso County, Colorado. The business of USRA is managed and operated at the Colorado Springs office, including, but not limited to, the membership of USAR.

5. In 1998 Romana von Ondarza, the defendant in USAR's lawsuits, Case No. 05CV4849, El Paso County, Colorado, District Court, applied for membership in USAR by submitting an application to USAR in Colorado, and paying a fee to USAR in Colorado. She has been a member of USAR since 1998 and as of 2003, became a lifetime member.

6. As a member of USRA, Romana von Ondarza competed on the USAR Women's' Pro Tour in 2001-1003. Attached to this affidavit are 5 pages of printouts of her events and cash winnings for those years. She would not have

been allowed to compete in the events or win the money unless she was a member of USRA.

Dated: April *13*, 2006.

Kevin Joyce
Kevin Joyce

Subscribed and sworn to before me on April 13, 2006, by Doug Kevin Joyce.

My commission expires:

Kellie L. Acker
Notary Public

KELLIE L. ACKER
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires
February 11, 2008

AFFIDAVIT OF JIM HISER

I, Jim Hiser, being first duly sworn, deposes and states as follows:

1 The facts stated in this affidavit are known to me personally and are true to the best of my knowledge.

2 I am the Executive Director of USA Racquetball, a Colorado nonprofit corporation (USAR) and have held that position since January 1, 2002. Prior to becoming Executive Director, I was Program Director, from 1989 to my current position of Executive Director. In my positions with USRA I have direct and personal knowledge of the *records* of USRA.

3. The US Open Racquetball Champion-ships was organized by USAR 10 years ago and USAR retains 100% ownership of the event and the name. Ganim Enterprises, Inc. has been retained by USAR for event management services.

Dated: April *13*, 2006.

Jim Hiser
Jim Hiser

Subscribed and sworn to before me on April 13, 2006, by Jim Hiser.

My commission expires:

Kellie L. Acker
Notary Public

KELLIE L. ACKER
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires
February 11, 2008

APPENDIX F

DISTRICT COURT, EL PASO COUNTY, COLORADO Court Address: 20 East Vermijo Avenue *Colorado Springs, CO 80903* (719) 448-7577	
Plaintiff: USA RACQUETBALL a/k/a UNITED STATES RACQUETBALL ASSOCIATION, d/b/a US OPEN RACQUETBALL CHAMPIONSHIPS v. **Defendant:** RAMONA von ONDARZA	**▲COURT USE ONLY▲** Case Number: 05-CV-4849 Div.: 3 Ctrm.: 406
Attorneys for Defendant: Brett N. Huff, #32071 White and Steele, P.C. 950 17th Street, 21st Floor Denver, Colorado 80202-2804 (303) 296-2828 bhuff@wsteele.com	
REPLY IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION	

Defendant Ramona Von Ondarza, a foreign citizen residing in Florida, by and through her attorneys, White and Steele, P.C., and making a special appearance for that purpose, replies in support of her Motion to Dismiss for Lack of Personal Jurisdiction. In support hereof, defendant states as follows:

App. F

Plaintiff responded to defendant's Motion to Dismiss for Lack of Personal Jurisdiction with a number of tenuous arguments which, like gossamer threads, break and evaporate in the force of scrutiny and judicial light. Before demonstrating this analogy to the Court, it is important to point out the following undisputed facts that go to the very heart of this jurisdictional controversy:

UNDISPUTED FACTS

1. Defendant is not a resident of Colorado;
2. Defendant is domiciled in Florida;
3. Defendant has never lived in Colorado;
4. Defendant has never worked or paid taxes in Colorado;
5. Defendant has never asserted a law suit in Colorado Courts;
6. Defendant has not competed in any racquetball events in Colorado;

7. Defendant has never come to Colorado to conduct business;

8. Defendant did not sign the Sponsorship Contract;

9. The Sponsorship Contract was not even signed in Colorado;

10. The Sponsorship Contract was signed by two parties: one "having its principal offices at 6449 Lake Trail Drive, Westerville, Ohio 43082, and the other "having its principal offices in Herzogenaurach, Germany";

11. The two events that are the subject of the Sponsorship Contract did not occur in Colorado, but in Memphis, Tennessee.

REPLY TO PLAINTIFF'S RESPONSE

Plaintiff reaches with two arguments to persuade this Court that there is somehow good reason for this Court to

exercise jurisdiction over a Florida resident. First, plaintiff argues that it is a Colorado resident and, under the "effects test," that the injury not only occurred in Colorado, but that defendant's conduct was intentionally directed at causing harm to it in Colorado. The second argument is that defendant, by virtue of being a member of the United States Racquetball Association, is purposefully availing herself of the laws and protections of the State of Colorado.

Addressing the second argument first, plaintiff tries to convince the Court that defendant has substantial, systematic, and continuous contacts with the State of Colorado necessary for the exercise of general jurisdiction, because she is a member of its organization and that she has won prize money competing in certain racquetball competitions around the country. These are not substantial, systematic and continuous contacts in which to justify dragging a private individual from Florida to Colorado to defend a lawsuit. Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 416

(1984). Plaintiff's analysis would yield absurd results if accepted as true. Plaintiff is a private, nonprofit corporation that touts its international and national membership of 13,000 members. Exhibits B and C, p. 3. Plaintiff is not a governmental entity, but a business that organizes, promotes and sanctions certain racquetball competitions, including seeking and receiving sponsors for these events. (Complaint, ¶¶ 6-7.) Plaintiff takes the position that all of its members in the United States and abroad are purposefully availing themselves of the laws and protections of the State of Colorado simply because they pay membership dues and are allowed to compete in racquetball tournaments around the country. This is absurd because all of plaintiff's 13,000 plus members cannot be hauled into a Colorado court when there is a conflict between plaintiff and its members. Being a member of plaintiff's organization and playing in tournaments is grossly insufficient contact with this State to establish the substantial, systematic, and continuous contacts

with Colorado, such that the maintenance of a lawsuit in Colorado does not offend traditional notions of fair play and substantial justice. Tellingly, plaintiff points to five tournaments in which the defendant won monetary prizes; however, none of the events even occurred in Colorado! These events occurred in North Carolina, Tennessee, Maryland and Canada, but not one of these events occurred within a thousand miles of Colorado.

Plaintiff also argues that it has "bylaws, which are a contact between plaintiff and its members and are governed by Colorado law." (Plaintiff's Response, p. 5.) "Bylaws," however, are defined as "regulations, ordinances, rules or laws adopted by an association or corporation or the like for its internal governance. Bylaws define the rights and obligations of various officers, persons or groups within the corporate structure and provide the rules for routine matters such as calling meetings and the like." Black's Law Dictionary 201 (6th ed. 1990). Bylaws are rules that the

plaintiff has adopted for its internal regulation and to define the authority of its officers and others within its corporate structure. Defendant is not an officer or person "within the corporate structure" and there is no authority within these bylaws that would justify subjecting her to the jurisdiction of this Court. If there were such authority in these bylaws, plaintiff certainly would have attached them as an exhibit to its response brief. While these bylaws might somehow be a "contact" between plaintiff and defendant, it is not sufficient to establish the required substantial, systematic, and continuous contacts with Colorado to justify personal jurisdiction over her.

Plaintiff's first argument also fails for a number of reasons. First, I invite the Court's attention to the Sponsorship Contract that is the center of this lawsuit. By the very language of the Sponsorship Contract, it was entered into by an entity known as **"U.S. OPEN RACQUETBALL CHAMPIONSHIPS directed by Ganim Enterprises, Inc.,**

having its principal offices at 6449 Lake Trail Drive, Westerville, Ohio 43082...." (Exhibit 1, Complaint) (Emphasis added). Even the footer on the first page of the contract reads, in part, "**6449 Lake Trail Drive, Westerville, Ohio 43082 . . . USRA.**" *Id.* (Emphasis added). Assuming for argument sake that defendant had signed the Sponsorship Contract, by the very terms of the contract, she would have been directing her conduct and transacting business with an Ohio company, not a Colorado resident. Plaintiff cannot deny that whatever business was conducted, it was being conducted by Douglas Ganim of Ganim Enterprises, Inc., in Ohio. In fact, Exhibit 2 to plaintiff's Complaint cements this fact, as the Court will see that it is "Doug Ganim" at "6449 Lake Trail Drive, Westerville, OH 43082" who is corresponding with Adidas regarding this matter. There can be no mistake in light of this evidence that it is a Ohio resident or business that is purportedly transacting the business of the subject events and not the plaintiff.

Moreover, if defendant had signed the Sponsorship Agreement, she would have been conducting business related to two U.S. Open events occurring in "Memphis," not Colorado. Furthermore, all of the activities described in the Sponsorship Agreement occurred in Memphis, not Colorado.

Additionally, if plaintiff wanted to put defendant on fair notice that she would be subject to the jurisdiction of a Colorado court, it could simply have included a choice of forum clause in the Sponsorship Agreement. However, it did not. Since contracts are construed against the drafter, *see, e.g.*, Green Shoe Mfg. Co. v. Farber, 712 P.2d 1014, 1016 (Colo. 1986), and plaintiff is apparently the drafter of the contract in this case, or its agent Doug Ganim drafted the contract, it should be presumed that plaintiff did not intend to assert a lawsuit in Colorado in the event of a breach.

Finally, plaintiff's attempts to haul defendant from Florida into this Court simply violates the notions of fair play and substantial justice. If plaintiff believes that it has a cause

of action against Ms. Von Ondarza, then it should be required to file its lawsuit in Florida, where she lives, or in Memphis, where the subject events of the contract occurred, or in Ohio, where apparently Mr. Ganim of Ganim Enterprises, Inc. signed this contract.

WHEREFORE, defendant respectfully moves the Court to dismiss the Complaint filed herein at plaintiff's costs.

Dated this 1st day of May, 2006.

Respectfully submitted,

SIGNATURE OF BRETT N. HUFF ON FILE AT THE OFFICES OF WHITE AND STEELE, P.C.

By: *Brett N. Huff*
Brett N. Huff, #32071
WHITE AND STEELE, P.C.
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 1, 2006, a true and correct copy of the foregoing was electronically filed with LexisNexis and served upon the following:

Barton L. Enoch, Esq.
Enoch & Enoch, P.C.
P.O. Box 1539
Colorado Springs, CO 80901-1539

s/Charlene Falk
For White and Steele, P.C.

Court: CO El Paso County District Court 4th JD

Judge: Kane, Thomas Kelly

File & Serve reviewed Transaction ID: 1042136

Current date: 5/10/2006

Case number: 2005cv4849

Case name: USA Racquetball a/k/a United States Racquetball Association, d/b/a US Open Racquetball Championships vs Ramona von Ondarza

For the reasons recited in the Response of the Plaintiff, the Motion to Dismiss For Lack of Personal Jurisdiction is denied.

/s/ Judge Thomas Kelly Kane

App. G